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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1957 1958

No. 143

EMMA SPECTOR,

*Petitioner,*

*vs.*

IONE LOIS PETE, *et al.*,

*Respondents.*

**Petition for Rehearing of Petition for Writ of Certiorari to the District Court of Appeal, Fourth Appellate District, State of California and/or the Supreme Court of the State of California.**

IRL DAVIS BRETT and
SAMUEL MCKEEHAN DAGUE,
458 South Spring Street,
Los Angeles 13, California,
*Counsel for Petitioner.*

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**Petition for Rehearing of Petition for Writ of Certiorari to the District Court of Appeal, Fourth Appellate District, State of California and/or the Supreme Court of the State of California.**

Emma Spector respectfully petitions for a rehearing by this Honorable Court of her Petition for a Writ of Certiorari to review the judgment of the District Court of Appeal, Fourth Appellate District of the State of California, entered in the above-entitled case on February 4, 1958.

## Jurisdiction.

The jurisdiction of this Court to entertain this Petition for Rehearing is derived through Rule 58(2) of the Rules of this Court. Her Petition for Certiorari was originally denied on October 13, 1958.

**Reasons for Granting Rehearing and Issuing the Writ.**

First, in re-presenting her Petition for Certiorari and this Petition for a Rehearing thereof, petitioner respectfully directs this Court's attention to the fact that the legal result of its denial of certiorari leaves the decision below as establishing *a federal rule* directly contrary to *all* interpretations by the Federal Attorney General and *all* interpretations by the Solicitor of the Department of the Interior; that the decision below is squarely in conflict with the amendatory provisions of Title 25, United States Code, Sections 349 and 405, which have been interpreted to have been enacted for the express purpose of permitting alienation of restricted Indian lands with the consent of the Federal Government; that it is contrary to the only decisions of the Federal Courts and that the conflicts above identified arise through the lower court's determination that it is unlawful for an Indian allottee and holder of a restricted Trust Patent upon Indian lands and a proposed purchaser from him to comply strictly with the rules and regulations of the Indian Office, negotiate a preliminary transaction which is conditioned upon approval by the Government and to carry on their negotiations in the Office of and pursuant to the directions of the Indian Agent in charge in such manner that the transaction is approved by the Government through issuing a Fee Patent to the Indian, pursuant to Title 25, United States Code, Section 349, *for the purpose of consummating the transaction* and enabling the Indian to convey title as so approved. The lower court decision also establishes *as federal law* that by virtue of

the provisions of Title 25, United States Code, Section 348, and despite its partial repeal by Title 25, United States Code, Sections 349 and 405, an Indian cannot ratify the approved transaction by partial performance and the purchaser cannot require specific performance of the conveyance which the Indian had promised to make and the Government had approved even though, in reliance thereon, the purchaser had changed her position and made substantial improvements upon the premises.

Second, this Petition for Rehearing is further based upon the fact that such decision has clouded Indian titles upon this Reservation to such extent that title companies will not insure titles to such land, without which a title is unmarketable under California law.

Third, this Petition for Rehearing is further based upon the fact that it appears expressly from the Clerk's Transcript of the pleadings that the court below failed to note and to *accept as true upon demurrer* the allegations of paragraph VIII of the Complaint [R. 3] that there were *alternate* conditions *agreed upon* and *approved*, the second of which was that *approval* by the United States of America *would be evidenced* by releasing all restrictions imposed by law upon the Indian's right to convey through issuance and delivery to him of a full unrestricted Fee Patent, and that in paragraph IX [R. 7] the United States elected to free the property from all restrictions, *so that Marcus Pete, Jr., could directly consummate said transaction*, by issuing and delivering to him an unrestricted Fee Patent to all of said property.

## Conclusion.

For the reasons set forth above and the reasons more specifically detailed in the Petition for Writ of Certiorari, it is respectfully urged that rehearing thereof be granted and that upon such rehearing a Writ of Certiorari issued to the District Court of Appeal, Fourth Appellate District of the State of California.

Respectfully submitted,

IRL DAVIS BRETT and

SAMUEL MCKEEHAN DAGUE,

*Counsel for Petitioner.*

## Certificate of Counsel.

We hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 33 of the rules of this Court.

IRL DAVIS BRETT and

SAMUEL MCKEEHAN DAGUE,

*Counsel for Petitioner.*